IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 17916 of 2006
DATE OF DECISION: 14.11.2006

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Mahender Singh ..PETITIONER

VS.

Managing Director, The Hisar District Cental Cooperative Bank Limited, Hisar and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. G.S. Hooda, Advocate
for the petitioner.

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ARVIND KUMAR, J.

The petitioner-workman is aggrieved with the award dated 21.4.1999 passed by the Labour Court, whereby the industrial dispute raised by him was dismissed.

It may be noticed that the services of petitioner, who, at one point of time, was serving respondent No.1-respondent-Bank as Secretary, were terminated on 16.1.1992 following some charges of causing loss to the respondent-Bank, embezzlement of funds, irregularities etc. The petitioner challenged his termination by raising an industrial dispute, which was referred by the appropriate Government to the Labour Court. The Labour Court decided the lis in two phases. In the first phase the Labour Court, vide award dated 12.2.1996, on the issue regarding fairness of enquiry held that the enquiry which was made basis of the termination of services of the petitioner was not held in accordance with law and principles of natural justice. However, in the second phase, the Labour Court vide impugned award dated 21.4.1999 held the petitioner guilty of committing embezzlement of funds of respondent-Bank on various occasions and also committing irregularities by making false and incorrect entries in the cash book. Justifying the action of respondent No.1-respondent-Bank in terminating the services of the petitioner, the Labour Court, as noticed

above, dismissed the claim of the petitioner. Therefore, the instant petition under Articles 226/227 of the Constitution of India has been filed by the petitioner.

We have heard learned counsel for the petitioner and have also gone through the paper-book as also the impugned award.

It is worth to mention here that two criminal cases were registered against the petitioner viz. one under Sections 408/468/471 of Indian Penal Code, in which he was acquitted by the trial Court on 17.2.1999 and second registered under various sections of Essential Commodities Act, in which he was convicted by the trial Court on 14.9.1998 but acquitted by this Court in an appeal, on 3.5.2006.

It has been argued by the learned counsel for the petitioner that once the enquiry on the basis of which the services of the petitioner were terminated has been held to be vitiated, the Labour Court has completely erred in relying upon the said enquiry report while holding that the services of the petitioner were rightly terminated, especially in the circumstances when the petitioner has been acquitted in both the criminal cases registered against him. Further, an attempt has been made to show that the aforesaid criminal cases, in which the petitioner has been acquitted, were having the same set of facts to those allegations contained in the charge-sheet, which were enquired into and made the basis of the termination of the services of the workman.

We are not at all convinced with the said contentions of learned counsel for the petitioner. The Labour Court vide the award dated 12.2.1996 though held that the enquiry conducted against the petitioner was not fair and proper, but this led the Labour Court to adjudicate the charges against the petitioner, itself on the basis of evidence adduced before it by both the parties. A bare perusal of the impugned award shows that while appearing before the Labour Court as WW-1, the petitioner himself admitted the factum of committing embezzlement of the funds of the respondent-Bank as also committing irregularities in the cash book and further deposited the amount whatsoever was found due against him as a result of his aforesaid act of omissions and commissions. It can also not lose sight of the fact that the scope of criminal proceedings under the criminal law and the scope of disciplinary proceedings in a departmental enquiry are quite distinct and

exclusive and independent. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impost penalty in accordance with the service rules. The standard of proof required in criminal proceedings and the departmental disciplinary action are not the same. In that eventuality, the approach of the Labour Court in justifying the action of the respondent-Bank in terminating the services of the petitioner does not suffer from any illegality.

The aforesaid two criminal cases registered against the petitioner were based on the allegations of not disbursing the levy sugar stock received for distribution and further that he misappropriated the same on the basis of fabricated documents. That allegations were never before the competent authority, as is evident from the order dated 16.1.1992 (Annexure P-1) vide which the services of the petitioner were terminated. Though the allegations of misappropriation of sugar stock was held to be proved by the Labour Court, but this charge alone was not against the petitioner. Rather the Labour Court, on the basis of admissions made by the petitioner himself as WW-1 held the charges of committing various embezzlement and irregularities in cash book, proved against the petitioner. Thus, the petitioner cannot derive any benefit from his acquittal in both the criminal cases registered against him.

Faced with this situation, learned counsel has contended that the extreme punishment of dismissal is excessive in view of the little amounts involved in embezzlement. The contention is meritless. The power of interference with the quantum of punishment is extremely limited Embezzlement though small or temporary is an equally serious offence. Moreover, It is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In the instant case, the petitioner was found guilty of misappropriating respondent-Bank's fund. There is nothing wrong in respondent-Bank's losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases there is no place for generosity or misplaced sympathy on the part of judicial forums and interfering with the quantum of

punishment awarded by the disciplinary and appellant authority. The conduct of the petitioner is incompatible with the continuance of relationship of master and servant. In this backdrop, the last prayer of the petitioner-workman for invoking the jurisdiction under Section 11-A of the Act is also not sustainable.

While exercising the writ jurisdiction under Article 226/227 of the Constitution of India, this Court would not sit as a Court of appeal over the findings of fact recorded by the Labour Court. Even otherwise, this Court is satisfied that on the basis of evidence on record, the Labour Court has arrived at certain findings of fact, which are neither perverse nor based on no evidence. In these circumstances, it would not be possible to interfere with the award given by the Labour Court.

The things do not rest here. There is also a legal hurdle in this case. The claim of the petitioner was dismissed by the Labour Court vide award dated 21.4.1999. Whereas, he has filed the instant petition after a considerable lapse of more than seven and a half years. The petitioner cannot take any benefit of the fact that he has been acquitted in the criminal case pending against him, on 3.5.2006. The criminal proceedings, as said above, are independent proceedings. The petitioner cannot escape from the question of limitation merely on this point as the cause of action to file the petition had been accrued to the petitioner much earlier when he was non-suited by the Labour Court on 21.4.1999. The Supreme Court in the case of **Sadasivaswamy v. State of Tamil Nadu, AIR 1974 Supreme Court 2271,** which has been followed by this Court in the case of **Harvinder Singh vs. State of Punjab & Ors. 2005 (2) SLR 587** has clearly held that an aggrieved party has to move the Court within a period of six months or at best within one year of the date when cause of action accrued. Therefore, the instant petition also suffers from delay and latches.

For the discussion above, the petition being devoid of any merit is dismissed in limine.

(ARVIND KUMAR)
JUDGE

November 14,2006 **(J.S. NARANG)**
Jiten **JUDGE**

Further, the instructions dated 26.3.1975 (Annexure P-6) so relied by the learned counsel for the petitioner are of no help to the petitioner at this juncture. Vide the said instructions, the appropriate Government while excluding the offences including the moral turpitude, vested the concerned appointing authorities with discretionary powers to consider the cases of convicts released from jail for employment, subject to their complete satisfaction. Thus, the petitioner cannot seeks such type of relief from this Court without there being any adverse order passed by his appointing authority on the alleged representation made by him on 23.8.2006. Moreover, the petitioner has not claimed any relief with regard to his alleged pending representation in the instant petition.